



COUNTY OF LOS ANGELES

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VIA E-MAIL

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Re: Los Angeles County Comments to DTSC SB 673 Draft Regulatory Framework Concepts

Dear Mrs. Holmes-Gen:

Thank you for the opportunity to review and comment on the Department of Toxic Substances Control's SB 673 regulatory process to develop permit protections for vulnerable communities. The County of Los Angeles (County) including the Department of Public Health and the Department of Regional Planning, submits the following comments on behalf of the County. The County is very concerned about the vulnerable communities affected by the hazardous waste facilities permitted by DTSC which pose significant health risks and environmental impacts to communities in the County.

1. Initial Recommendation of Facility Action Pathways

- a. Cumulative Impacts: Facilities within disadvantaged communities should be prioritized and be subject to higher standards. The weight of the factors considered in the facility assessment is very important. Other criteria of determining which pathway each facility will be assigned should include the proximity to sensitive receptors, the type of facility, including the risk posed by the chemicals involved in its operations, and the other types of permits the facility has that potentially impact the community other than hazardous waste (e.g. air emissions, storm water, etc.) as factors of the total record of information.
- b. Ensure that all facilities are listed in Cortese List so that in case Conditional Use Permit renewal is required, the project is subject to CEQA review. Existing facilities are sometimes found to be exempt from CEQA based on categorical

exemption Class 1. However, there are also exceptions to exemption (CEQA Guidelines 13500.2), one of which is Hazardous Waste Sites that are listed per Section 65962.5 of the Government Code (the Cortese List). This means that, if a facility is listed on the Cortese List, a CUP review process for this facility will be subject to CEQA review.

- c. Consider other sources of pollution burden within the community when determining pathway designation. Incorporate local health and government agencies data/tools as part of the total record of information used when making decisions on pathway designation. It is unclear how a facility with mixed-tier assessment (e.g. moderate level of potential impact combined with a highest CES ranking of 95th percentile) would be assigned a pathway. We suggest defaulting to the most health protective tier, e.g. moderate level of potential impact and CES of 95th percentile would result in Tier 1 pathway assignment. Consider changing the Tier 3 Action Pathway to “Community Engagement Only” to clearly differentiate the tiers.
- d. Sensitive receptors: It is important to give proximity to sensitive receptors and other community impact factors a high weight. If a buffer will be developed based on sensitive receptors, we suggest that the definition provides clear list of use types. For example, LA County Department of Regional Planning is currently developing a definition for ‘sensitive uses’ and considering to include the following: residential zone, residential use, schools, daycare, preschool, senior residential, senior care facilities, hospital, library, parks, playground, and childcare or similar facilities as an accessory to a place of worship.
- e. “Setback Distance”: DTSC should determine the goal of establishing ‘setback distance’. If this is referring to the close proximity area where outreach and analysis is required for facilities review, we suggest changing it to something like ‘outreach area’ or ‘research area’, etc. Usually ‘setback distance’ refers to an area where no building or structural projection is allowed. In any event, DTSC should establish a minimum setback from sensitive receptors, if possible.
- f. Community Assessment: Maybe Health Impact Assessment could be part of this study. HIA is different from HRA (Health Risk Assessment) in that it takes public health angle and provides a higher-level assessment. It can also include policy recommendations that can be used to develop your program.
- g. Permit denial: We suggest that DTSC develop clear criteria for permits to be denied and to delineate a process (i.e. public hearing, site vacation, site clean-up, etc.) in conjunction with effective enforcement actions that can be implemented for facilities continuing to have serious violations before and/or after the permit denial. DTSC should establish clear criteria for places where no new permits would be granted based on the community characteristics such as overburdened communities.

2. Public Review and Draft List of Facility Action Pathways

- a. DTSC should consider other sources of pollution burden within the community and local health data as part of decision making. Supplemental factors should be considered standard in each case. Instead of the relying on the public to find and provide these data, DTSC should seek out as much comprehensive information as possible in each case. This would reduce the burden on local communities to provide information and ensure equity amongst communities. Communities both highly burdened and without environmental health focused community-based organizations may not receive the same consideration as a less-burdened and more organized community. In addition, it is unclear on how the community will be engaged for public review and comment. DTSC should list potential outreach methods and expected timelines for informing the public on the opportunity to participate in the public review process. Community expectations must be managed; thus, DTSC needs to be clear on what public comment will be able to achieve.
- b. If DTSC does not have a plan to identify unpermitted hazardous waste facilities as a part of this effort, it may require coordination with local jurisdictions. However, at least identifying target/pilot areas and conducting a permit check survey might be a good reality check on the range and level of existing unpermitted facilities. If DTSC takes on this effort, we also suggest to be transparent in data sharing and start thinking about how to address these unpermitted facilities (i.e., take an enforcement action to bring them into compliance)

3. Permit Application Review

- a. Develop a list of review criteria and priorities, as well as an approximate timeline for case processing, and share with the communities to help manage their expectation.
- b. Please check with the local agencies for the land use entitlement to check whether there is any violations of local ordinances (including the land use entitlement), and consider them during your review.
- c. If cases will be referred to local agencies for any review or comments, we would like to be engaged earlier in the discussion. It is unclear what metrics (measurable; enforceable) will be used to address conditions. It seems that a clear goal related to either the facility's emissions (reduce; not increase; measure accurately) and/or the community nearby (improve health indicators; not worse health indicators) would be necessary.
- d. Alternative pathway option must include a community/residential component and ensure the community organizations represent the community and there is a process to allow more community voices to be included.

4. Community Engagement and Outreach

- a. Community Plans should consider including information for the community on emergency preparedness related to living in proximity to a hazardous waste facility. Prepare for and allow multiple community voices/representatives to participate in the process. Clearly communicate with the community groups the parameter of the existing regulations and how they are implemented vs. what types of community input can be incorporated/not incorporated into mitigation and monitoring strategies.
- b. The timeline is not specified for holding public meetings in the Tier 1 Action Pathway. It is implied that the meetings should be hosted annually. One difference between the Tier 3 Action Pathway and the other two pathways is the lack of community meetings. It is recommended that in-person meetings still be included in the Tier 3 pathway given that this pathway is solely “Community Outreach”.

5. Mitigation and Monitoring

- a. DTSC should determine if there are known mitigation measures for hazardous waste facilities that are related to site development standards that can be generally applied. For example, if a fully enclosed structure can significantly mitigate potential impacts on the neighborhood, we can incorporate it into the Green Zones ordinance. What if the mitigation is not effective? There needs to be performance measures related to the mitigation, and possibly monitoring.
- b. Mitigation measures should be tied to specific impact of the facility and/or specific needs of the community. There are various assessment tools that can be used to accomplish this.
- c. Develop a specific mechanism that will require implementation of mitigation and monitoring programs. DTSC should consider better permitting and enforcement coordination and/or a clear division of labor. Also, determine which legal document should be incorporated for the most effective implementation (permit conditions, stand-alone document, environmental review documents, etc.). It is unclear what metrics (measurable; enforceable) will be used to determine success. It seems that a clear goal related to either the facility’s emissions (reduce; not increase; measure accurately) and/or the community nearby (improve health indicators) would be necessary. Progress on implementing monitoring and mitigation measures should include progress on reaching facility/community health goals and need to have clear, enforceable outcomes tied to not making progress on an agreed upon timeline. It is not clear how specific mitigation and monitoring strategies will be identified. Recommended strategies are developed by considering the required environmental impact report and human health risk assessment that these facilities are required to complete. A health impact

assessment should be conducted to assess cumulative impacts and consider contribution of social and economic factors, community concerns and health issues.

6. Data and Tools Review

- a. CES can be used to prioritize or assign facilities into certain review pathways.
- b. CalEPA uses CES mostly for funding prioritization purposes. It provides a high-level snapshot of where disadvantaged communities are generally located. CES scores can be considered during the review and development of mitigation strategies, but it could be difficult to build a case where it is used as a sole ground of making the final decision. Mitigation measures should be tied to specific impact of the facility and/or specific needs of the community. There are various assessment tools that can be used to accomplish this.

7. Coordination with Other Agencies

- a. As a global comment, we hope that the State creates more funding programs targeting specific EJ issues associated with industrial/impactful facilities, such as this initiative. If developed, those funding programs should include sufficient funding to support outreach activities in disadvantaged communities. DTSC should partner with other regulatory agencies to require strict enforcement of existing permits at facilities that potentially impact the community beyond hazardous waste (e.g. air emissions, storm water, etc.).
- b. We also recommend strong internal coordination between the policy, permitting, and enforcement sections at DTSC. Since there will be new policy prioritizing EJ perspectives, education of staff who will be implementing the effort would be critical. For example, more staff resources can be allocated in disadvantaged communities and they can allocate more time on reviewing prioritized cases in coordination with local agencies.

Very truly yours,

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